

## **EXHIBIT 16**

Robert P. Kinross December 2, 2009

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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

- - - - - +  
ePLUS, INC., : Civil Action  
Plaintiff, : No. 3:09cv620  
v. :  
LAWSON SOFTWARE, INC. :  
Defendant. :  
- - - - - +

Videotaped Deposition of ROBERT P. KINROSS

Washington, DC  
Wednesday, December 2, 2009  
11:03 a.m.

Job No.: 22-169719

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Reported by: Katy M. Zamora, RPR

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1 to the customers and say, basically, if you have a  
 2 vendor relationship with us, you have this option of  
 3 using the RIMS system?

4 A. The customer would not have the option of  
 5 using the RIMS system. The customer service rep from  
 6 Fisher would be part of the bundled package, so that it  
 7 would have an on-site customer service representative  
 8 that would be included to run the RIMS system.

9 Q. And with that vendor relationship, is that  
 10 how Fisher Scientific made its money?

11 A. Yes. By selling products, yes.

12 Q. So customers would buy products, enter a  
 13 relationship with Fisher Scientific, and as part of  
 14 that relationship Fisher Scientific would offer to put  
 15 a customer service representative on site to use the  
 16 RIMS system?

17 A. Yes.

18 Q. Did the customers ever provide information to  
 19 the RIMS system? Did you have a way to do that?

20 A. The typical way to do that was through paper  
 21 requisitions handed to the customer service rep,  
 22 handwritten.

23 Q. That was the typical way, was there any other  
 24 way of doing it back before 1993?

25 A. I don't believe so. I can't recall any other

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1 back up for a second -- you reviewed this and signed a  
 2 declaration saying that you had reviewed this and you  
 3 are one of the inventors on this, right?

4 A. Yes.

5 Q. As I understand -- is it correct to construe  
 6 this as saying the Fisher Scientific requisition system  
 7 known as Fisher RIMS was among the known requisitioning  
 8 and purchasing systems at the time you filed for the  
 9 683 patent?

10 A. Yes.

11 Q. Who was it known to?

12 A. Well, it would certainly be known to Fisher  
 13 sales reps, trying to entice large customers to use the  
 14 system. Fisher would participate in trade shows and  
 15 have representatives from the information systems and  
 16 services department available to talk to customers  
 17 about what system capabilities Fisher had. So they  
 18 were actively marketing Fisher capabilities as  
 19 value-added systems.

20 Q. So trade shows would be an example of a place  
 21 where Fisher Scientific employees were out marketing  
 22 Fisher's capabilities for the vendor relationship  
 23 including the RIMS system?

24 A. Yes.

25 Q. And that was happening at least by 1992,

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1 way, yes. The telephone would be another way.

2 Q. People calling up the customer service  
 3 representative --

4 A. Yes.

5 Q. -- and just saying, here's the products I  
 6 want to buy?

7 A. Exactly.

8 Q. Now, if you go back to column 1, again, on  
 9 that 683 patent -- column 1, not page 1 --

10 A. All right.

11 Q. If you go back to column 1 in the left side  
 12 of about line 10, do you see the sentence there: There  
 13 are a number of known requisition/purchasing systems  
 14 that manage and process requisitions and purchase  
 15 orders. One such system is the Fisher Scientific  
 16 requisition and inventory management system (Fisher),  
 17 described in U.S. patent number 5712989 filed April 2,  
 18 '93 and assigned to Fisher Scientific Company of  
 19 Pittsburgh, PA, the disclosure of which is incorporated  
 20 herein by reference, quote. Do you see those two  
 21 sentences?

22 A. Yes, I do.

23 Q. I want to direct your attention now where it  
 24 says, known requisition systems. As I understand it  
 25 these two sentences, and this is a document, if I can

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1 correct?

2 A. Yes, that's correct.

3 Q. So is it your understanding -- well, let me  
 4 back up for a second.

5 As one of the vendors who signed an oath with  
 6 this patent and the other two patents that we've marked  
 7 as exhibits, did you have an understanding that there  
 8 is something called "prior art" when you file a patent  
 9 publication?

10 A. Yes, I understood that. Yes.

11 Q. What was your understanding of what prior art  
 12 is at the time, August of '94 when you filed -- first  
 13 filed these patent applications?

14 A. My understanding with prior art was systems  
 15 or ideas that may have existed that were building  
 16 blocks or similar to what the invention here would be.

17 Q. And the idea with your patent is you're not  
 18 supposed to get a patent on things that are prior art,  
 19 correct?

20 MS. ALBERT: Object to the form. Calls for  
 21 legal conclusion.

22 BY MR. McDONALD:

23 Q. I'm asking for your understanding.

24 A. Well, yes.

25 Q. And you understood as one of the applicants

7 (Pages 22 to 25)

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1 for these patents that you had a duty to disclose prior  
 2 art to the patent office?

3 A. Yes.

4 Q. Was the RIMS system as it existed at the end  
 5 of 1992 something that you understood was prior art to  
 6 the three patents we've marked as exhibits --

7 MS. ALBERT: Calls for a legal collusion.

8 BY MR. McDONALD:

9 Q. -- today?

10 A. Yes, I think it was.

11 Q. Is that because it was out in the  
 12 marketplace, it was part of what Fisher Scientific was  
 13 offering to customers more than one year before August  
 14 of '94 when you filed this patent application, is that  
 15 why?

16 MS. ALBERT: Calls for a legal conclusion.

17 BY MR. McDONALD:

18 Q. I'm asking for your understanding,  
 19 Mr. Kinross.

20 A. Could you repeat the question, please?

21 Q. I'll rephrase it.

22 Was it your understanding when you filed the  
 23 application for the 683 patent and signed on the  
 24 declaration and oath that went with that as an  
 25 inventor, that the RIMS system was prior art to that

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1 is a copy of the Declaration and Power of Attorney form  
 2 that you signed in 1994, as indicated on page 3. Do  
 3 you recognize this document?

4 A. Yes.

5 Q. What is it?

6 A. Well, my understanding of the power of  
 7 attorney is giving a lawyer, and basically Allen  
 8 Dornberg, the authority to represent me for this patent  
 9 application.

10 Q. So the title of this is declaration and power  
 11 of attorney for patent application, right?

12 A. Yes.

13 MS. ALBERT: I just want to note for the  
 14 record that I think you've misidentified exactly what  
 15 the exhibit is because it appears to be multiple  
 16 documents stapled together, at least my copy is.

17 MR. McDONALD: Oh, okay. You're right. How  
 18 about -- would you agree, Jennifer, that we should  
 19 detach the pages beginning with notice to file missing  
 20 parts, just to keep it to the declaration?

21 MS. ALBERT: Yeah, correct.

22 MR. McDONALD: Mr. Kinross, I can get that  
 23 back and do that for you.

24 MS. ALBERT: So then, for the record, it's  
 25 going to be the document bearing, I guess, these are

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1 patent because it was on the market being offered to  
 2 customers as part of the vendor relationship package  
 3 more than a year before the filing date on the 683  
 4 patent?

5 MS. ALBERT: Calls for a legal conclusion.

6 A. My understanding of prior art was basically  
 7 what I told you before, and whether RIMS qualified as  
 8 prior art or not, I didn't know. It could be, based on  
 9 whether or not our patent attorney concluded it was  
 10 prior art. He was basically deciding what prior art  
 11 was; I was not. So if he concluded it as prior art, I  
 12 would agree with it. If he didn't conclude it as prior  
 13 art, I had no basis to determine what prior art was and  
 14 what prior art was not.

15 BY MR. McDONALD:

16 Q. Well, you had some understanding though at  
 17 the time, right?

18 A. Vaguely, saying, you know, prior art was  
 19 things that were invented before your invention that  
 20 might be similar.

21 Q. Can we mark this as Exhibit 5, please.

22 (Lawson Exhibit No. 5 was marked for  
 23 identification and attached to the deposition  
 24 transcript.)

25 Mr. Kinross, I'm handing you Exhibit 5, which

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1 production numbers L0132817 through 820.

2 MR. McDONALD: That is correct. Thank you.

3 BY MR. McDONALD:

4 Q. So if we just stick with this new version of  
 5 the document, Mr. Kinross, Exhibit 5 as modified, that  
 6 is a declaration and power of attorney for a patent  
 7 application that you, among other people, signed,  
 8 correct?

9 A. Yes.

10 Q. You signed it, is that September 30, 1994?  
 11 Is that the date?

12 A. Yes, September 30, '94.

13 Q. That's your signature there next to the --

14 A. Yes, it is.

15 Q. And you see on the first page this is for  
 16 application that was filed on August 10, '94 with the  
 17 serial number 08/288,577?

18 A. Yes.

19 Q. And that's the same filing date and serial or  
 20 application number that's on the first page of the 683  
 21 patent, Exhibit 1, right?

22 A. The August 10th, 1994 date --

23 Q. Yes.

24 A. Right.

25 Q. And also that serial or application number,

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<p style="text-align: right;">Page 70</p> <p>1 items. So the notion was Fisher could handle your 2 purchasing requirements, and we could do not just 3 Fisher items, but we could handle more than that. We 4 could take over part of your purchasing department and 5 handle your MRO, Maintenance Repair and Operating items 6 so that the impetus of the third-party group was to 7 take those nonstandard items and establish 8 relationships with suppliers for those and be able to 9 order them.</p> <p>10 BY MR. McDONALD:</p> <p>11 Q. Did personnel at Fisher Scientific offer the 12 RIMS capability as a tool in trying to get customer 13 business in part to help them message that Fisher can 14 also help you order products from other sources?</p> <p>15 A. Yes.</p> <p>16 Q. Was that true in the late '92, early '93 time 17 frame?</p> <p>18 A. Yes.</p> <p>19 Q. Could you turn to the RIMS patent to column 20 3, line 13. I'll just read the whole sentence there 21 once you get to that page. This is in the RIMS patent 22 now, and it says at -- beginning really at line 10, 23 quote, host computer 10 controls all inventory, pricing 24 and requisitioning operations of the distributor's 25 regularly stocked items using host pricing and</p>	<p style="text-align: right;">Page 72</p> <p>1 several databases, do you have an understanding of at 2 least what some of those multiple databases are that 3 are in that host or part of what the host computer 4 controls there in the inventory database 20?</p> <p>5 A. Okay. It's referencing -- describing them 6 below --</p> <p>7 Q. Yeah.</p> <p>8 A. Do I have an opportunity to read that before 9 I answer?</p> <p>10 Q. Sure. If that would help you, sure. Yeah.</p> <p>11 A. Do you know where that would be below?</p> <p>12 Q. Well, I had a little trouble really 13 understanding it myself. That's kind of one of the 14 reasons I'm asking you, but there is some continuing 15 discussion of that database 20 throughout column 3. I 16 guess, I'll refer you to that column 3 -- the entirety 17 of column 3 as at least talking about database 20.</p> <p>18 A. Okay. Well, without --</p> <p>19 MS. ALBERT: But feel free to look at other 20 portions of the patent, if that helps you.</p> <p>21 THE WITNESS: Okay.</p> <p>22 BY MR. McDONALD:</p> <p>23 Q. Right.</p> <p>24 A. Okay. I've read the entire column 3 and the 25 question, I believe, was related to --</p>
<p style="text-align: right;">Page 71</p> <p>1 inventory database 20, (which is actually comprised of 2 several databases as will be described below) in a 3 manner which is well known to those of ordinary skill 4 in the art, do you see that sentence?</p> <p>5 A. Yes.</p> <p>6 Q. All right. One question I have about this 7 is, is it your understanding -- what is the host 8 pricing and inventory database in the RIMS system, can 9 you explain to me generally what that is?</p> <p>10 MS. ALBERT: Object to the form. Lacks 11 foundation.</p> <p>12 A. The host pricing and inventory database would 13 be records that exist on the Fisher mainframe that 14 would provide inventory availability at various Fisher 15 stocking locations, and it would also provide types of 16 pricing that were available for this customer for this 17 particular item. And there were various pricing 18 schemes and algorithms that were employed at Fisher, 19 and the pricing routines would know which databases to 20 look at for an appropriate price for the customer based 21 on who they were and what arrangements were made with 22 that customer in the sales process.</p> <p>23 BY MR. McDONALD:</p> <p>24 Q. Okay. So when that sentence that I just read 25 says that that database is actually comprised of</p>	<p style="text-align: right;">Page 73</p> <p>1 Q. What I was asking -- I'll bring it back. 2 I'll just rephrase it. 3 About lines 13, 14 of column 3, there's a 4 parenthetical about that database 20 --</p> <p>5 A. Right.</p> <p>6 Q. -- which says it's actually comprised of 7 several databases.</p> <p>8 A. That's right.</p> <p>9 Q. And I was trying to figure out what are the 10 several databases that comprise host pricing and 11 inventory database 20?</p> <p>12 A. Okay. All right. And in regard to the 13 pricing, there were different pricing databases at 14 Fisher to provide a unique price for a given customer. 15 One, in particular, was a customer hand price --</p> <p>16 Q. Hand?</p> <p>17 A. Hand, H-A-N-D, pricing. And what that would 18 do is allow a sales rep for a particular product to 19 enter an exact price that that customer would pay for 20 regardless of what other contracting negotiations were 21 established for that customer. So that's one 22 database --</p> <p>23 Q. Okay. So --</p> <p>24 A. -- that could be used for pricing. 25 Another database that could be used for</p>

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